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ABSTRACT

This pamphlet for parents of children with disabilities discusses regulations under the Individuals with Disabilities Education Act that relate to discipline procedures, including suspension or removal, manifestation determination, and interim alternative educational settings. Presented in a question-and-answer format, it specifically addresses: (1) questions that are considered during a manifestation determination to decide whether a behavior is a result of a disability; (2) the kind of discipline a school can use; (3) the definition of a short-term suspension; (4) the definition of a long-term suspension or expulsion; (5) discipline procedures if a child brings a weapon or drugs to school; (6) discipline procedures if the school believes a child is violent or dangerous; and (7) recourse for parents who disagree with a disciplinary action of a school. (CR)

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# Parent's Role in Discipline Decisions. Do You Know... Information Brochure.

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# Do You Know ...

Vol. 3 No. 2 Information brochure November 2000

## Parent's Role in Discipline Decisions

### What does the law say about discipline?

The Individuals with Disabilities Education Act (IDEA) focuses on preventing behavior problems before they begin. The brochure *Do You Know... Parents Role in Behavior Interventions* (vol. 2, no. 2) in this series explains how to prevent problem behavior by using a functional behavior assessment, positive behavioral support strategies, and an individual behavioral improvement plan. Ask your school for a copy or call one of the numbers on the back of this brochure.

Even with excellent planning and positive behavior interventions children's behavior may result in disciplinary actions. To be an effective advocate, you need to understand what the law says about how the school can discipline your child and what services must be provided. You must know what your and your child's rights are. This brochure will explain what IDEA says about discipline procedures, including suspension or removal, manifestation determination, and interim alternative educational settings. Other laws that may relate to discipline actions include Section 504 of the Rehabilitation Act, the Americans with Disabilities Act (ADA), and the Family Educational Rights and Privacy Act (FERPA).

The IDEA regulations require that the school follow certain procedures when they make discipline decisions for children who receive special education services. Understanding these procedures and knowing some special terms will help you through the process.

### What is a manifestation determination?

This is a meeting to decide whether a behavior is a result (manifestation) of your child's disability. The IEP team and other qualified school staff must look at the information you provide as well as evaluation and diagnostic results, observations, the child's IEP and placement. The IEP team must answer these questions:

- Are the IEP and placement appropriate?
- Are the special education services, supplementary aids and services, and behavior intervention strategies provided appropriately and consistently?
- Does your child understand the impact and results of his actions?
- Can your child control his behavior?

If the answer to all of these questions is "Yes," the IEP team may decide that the behavior was ***not a manifestation of your child's disability***. Your child may be disciplined in the same way as students without disabilities under your school's discipline policy.

If the answer to any of these questions is "No," ***the behavior must be considered related to your child's disability***.

## What kind of discipline can the school use?

The school's discipline policy is usually included in the student handbook. The school's discipline may include short-term and long-term suspension or removal, and expulsion. Corporal punishment or paddling is still legal in Missouri, although many school districts have policies that do not allow it. If you do not want corporal punishment to be a discipline option for your child, discuss the issue with the IEP team and develop an alternative plan for discipline before it happens.

## What is a short-term suspension (removal)?

***a) Ten days or less in a school year:*** Students can be removed from their regular school placement for up to ten school days. The school is **not** required to provide your child services for the first ten days of suspension in a school year. No special procedures are required. This means no functional behavioral assessment or manifestation determination is required. Removals of up to ten days are ***not considered a change of placement***. The removal must be consistent with what children without disabilities would receive for the same misbehavior.

***b) More than ten days in a school year:*** The school can remove your child for up to 10 school days at a time **more than once** in a school year for separate incidents of misconduct. *This would* **not** *be considered a* **change of placement** unless a pattern of suspension is created. *This is a complicated part of the law.*

The first time your child is removed over ten days in the school year, the IEP team must develop a functional behavioral assessment plan if no functional behavior assessment has previously been done. Next the IEP team must review the behavioral intervention plan, if there is one. Do changes need to be made to make it work better for your child? If there is no behavioral intervention plan, the IEP team must develop one, based on the functional assessment. This plan should teach appropriate behavior to replace the behavior that led to your child's removal.

Starting on the eleventh school day, the school must *"Provide services to the extent necessary to enable the child to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the IEP." Section 300.121 (d)(2)(i)* After talking with your child's special education teacher, school personnel **not** the IEP team, determine if services are needed.

## What is a long-term suspension or expulsion?

A suspension or removal of more than ten school days in a row is a long-term suspension. Separate suspensions totaling over ten days that create a "pattern of suspensions" are also considered a long-term suspension. To see if there is a "pattern," look at the length of each removal, the total amount of time your child is removed and how close the removals are to each other. You should keep a record of when your child is removed and for how long. If you think there is a "pattern," request a meeting with the school to discuss your concerns.

If a long-term suspension is being considered, the IEP team must:

- Review the functional behavioral assessment or develop a plan to do one.
- Review the behavior intervention plan or develop one if one does not exist.
- Make a manifestation determination.

If the behavior is not related to the disability, the school may remove your child, but must continue to provide services and access to the general education curriculum. If the behavior is related to the disability, the school cannot suspend or expel your child.

**A long-term suspension is a change in placement.** For any change of placement, the school must notify you on the date of the decision and give you the *Procedural Safeguards* that explain your and your child's rights.

The IEP team must decide your child's interim alternative educational setting and what services are needed for a free appropriate public education and access to the general education curriculum.

## What happens if my child has weapons or drugs at school?

If your child has a weapon or knowingly has, sells, or uses illegal drugs at any school function, the school may remove your child for up to 45 days. The use of illegal drugs does not include those prescribed for your child.

What can you expect?

- The school will notify you and send you a copy of your *Procedural Safeguards*.
- The IEP team must meet within ten business days to:
  - Review or develop a functional behavioral assessment plan
  - Review or develop a behavioral intervention plan
  - Conduct a manifestation determination (within 10 school days).
- The IEP team decides what the alternative educational setting will be and what services will be provided.

If your child's action is not related to the disability, the school's discipline policy will apply and the child could receive a long-term suspension.

## What if the school believes my child is violent or dangerous?

The school has two choices: an expedited due process hearing or a court injunction.

***a) An expedited due process hearing:*** If the school thinks your child will injure himself or others, they can request an expedited due process hearing to remove your child to an appropriate interim alternative educational setting for not more than 45 calendar days. The due process hearing must be completed within 45 days. The IEP team must conduct a manifestation determination within 10 school days. The outcome will not affect whether your child is removed. The school must show "substantial evidence" to the hearing officer that your child is a danger. This is a high standard. The school must show that the current placement was appropriate and that they took reasonable steps to minimize the risk, including providing supplementary aids and services. The setting proposed by the school, after talking with your child's special education teacher, must meet the definition of an interim alternative educational setting. This process can be repeated, if the school can show your child is still a danger to himself or others.

***b) A court injunction:*** Because this does not take as long, the school is more likely to choose this option. The school's attorney requests a court injunction to remove your child. The school must prove to the judge that there is a "substantial likelihood" that your child will injure herself or others and that they have taken reasonable steps to minimize the risk. The school's attorney prepares the court order. The court order will explain what services your child will receive, if any, and when the injunction expires.

## What can I do if I disagree with a disciplinary action of the school?

- Discuss your concerns with the teacher, the principal and the special education director.
- You have the right to due process if you disagree with any action the school proposes or refuses to take.
- For more information read the *Procedural Safeguards* available from the resources listed below.

## Other Information

- Bus suspensions count only if your child has transportation written in the IEP as a related service and the school provides no alternative transportation.
- In-school suspension (ISS), when your child is removed from his classroom to another setting in the school, would not be considered a day of suspension if your child continues to receive the services in the IEP, and continues to participate with nondisabled children the same amount of time as before.
- IDEA does not prohibit the school from notifying law enforcement of your child's criminal act under the Safe Schools Act.

## For more information and resources on discipline and interventions, contact:

### *Local school district*

Your child's teacher(s), building principal, or director of special education can help answer questions you may have.

### *Missouri Parents Act*

MPACT is the parent training and information center for parents of children with disabilities. Some resources include the *Do You Know* Parent's Role brochures series, and *Building a Bridge to the Future for Young Adults with Disabilities in Missouri*, a workbook to guide the lifelong process of transition.

1-877-588-5644 outside Kansas City
(816) 531-7070 in Kansas City
www.crn.org/mpact

### *Center for Innovations in Special Education (CISE)*

Resources on discipline and other topics can be borrowed from the CISE library or ordered through the online library catalog.

1-800-976-2473 (MO only)
(573) 884-7275
www.coe.missouri.edu/~mocise

### *Special Education Compliance Section–Dept. of Elementary and Secondary Education (DESE)*

(573) 751-0699
Fax: (573) 526=4404
www.dese.state.mo.us/divspeced/

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Published November 2000 by the Center for Innovations in Special Education (CISE). If you need this publication in an alternative format, contact CISE at (573) 884-7275; (800) 976-2473; Relay MO: (800) 735-2966 (TDD). Efforts will be made to accommodate your special needs.